

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
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Comments from the California Department of Education

Introduction

The California Department of Education (CDE) appreciates the opportunity to comment on this Notice of Proposed Rulemaking (NPRM) that discusses improvements to the universal service support mechanism for schools and libraries. The Universal Service Program for Schools and Libraries ("E-rate") has helped bring the Internet to many needy schools. The CDE welcomes the opportunity to comment on ways in which the E-rate program could be improved to better serve schools and libraries. Our comments are based upon our experience in helping districts understand and apply for E-rate discounts. In developing our comments, we solicited feedback from our public school districts; as a result, our comments include both the perspective of the CDE as well as that of public school applicants.

Along with the process improvements that will evolve out of this NPRM discussion, there may be a need to consider significant changes to the program to accomplish the NPRM goals. It is an interesting and challenging journey to keep a program viable when change surrounds it.

"The significant problems we face cannot be solved at the same level of thinking we were at when we created them." Albert Einstein.

Comments

Eligible Services - What changes to the eligible services process should the Commission implement that relate to the application process and will serve to improve program operation and oversight of the program (Paragraph 9-14)?

Understanding which services and products are eligible under what conditions is difficult and confusing to applicants. The eligible services list describes services eligible under certain conditions. The program policy also makes certain services conditional. For example, in order for services to administrative buildings to be eligible, they must pass a two-part test.

One change the Commission should consider is to expand the definition of services eligible for administrative buildings. Some districts, particularly small and rural districts with few technology staff find it burdensome to have to interpret the school district's phone bills to determine which phone lines are eligible and ineligible. Because of this and other complexities of the E-rate application process, some E-rate applicants who are most in need of the program are frustrated and discouraged by program rules. Another reason to reconsider allowing eligible services to include "administrative purposes" is that children's safety is an important part of school life today. Cell phone service to bus drivers and paging services to school security officers are becoming more appropriate services to ensure the safety of children and should be eligible services.

Should the Commission implement a computer list of eligible services that is accessible online? What is the feasibility of an online eligible services list? How can the list be kept current (Paragraph 14)?

- CDE does not favor using a specific list of approved products as the sole determination of eligible services. A specific online list might limit the scope of eligible services and stifle the approval and use of new, innovative, and cost-effective products and services. This may be in contrast to the goal of minimizing program waste because cost-effective and efficient products might not be included on the list. Keeping the list accurate and current would be an important criterion for such an online list and would be an additional workload for the Administrator.
- On the other side of the list issue, the Administrator uses a list of eligible products used in the application review process. Making public this list would serve applicants wanting to develop a technology solution that has a high probability of being approved for E-rate. The advantage of making the list public would be that applicants would be less likely to select ineligible products or services. Applicants should also be given the ability to reference items not on the list in the application process. This list would not be the sole service eligibility determination, but provide applicants with a list of known approved services from which to choose.

Should the Commission reconsider or modify the current selection of products and services eligible for support in the E-rate program, in particular, WANs, wireless services, and voice mail (Paragraphs 15-20)?

- Wide Area Networks (WANs) can be used by school districts to reduce costs of connectivity for their schools. Under the principal of cost effectiveness, WANs should be eligible as Priority 2, Internal Connections for local school districts and regional consortia.
- Schools for which wire technology is not an appropriate solution may use wireless solutions. This is an example of technology outpacing program policy. If the intent is to provide connectivity to the Internet, wireless technology should be eligible for E-rate discounts. This change may serve to extend the program to reach rural schools that have not yet applied for E-rate.
- Voice mail is a way of communicating with school staff for educational purposes and raises the issue of whether voice mail should be ineligible when email is eligible. If

effective communication with school staff is the issue and voice mail and email contain similar messages from school stakeholders, voice mail should be an eligible service. Similarly, having to breakout ineligible voice mail, E911 charges as an ineligible component of the basic phone bill causes additional work for both the applicant and administrator. CDE urges the Commission to include E911 and voice mail services as eligible discounted services.

Should the Administrator continue to use the benchmark of 30 percent or less as part of the determination of whether a request will be considered (Paragraphs 22 and 23)?

- The Administrator utilizes a 30 percent processing benchmark when reviewing funding requests that include both eligible and ineligible services. If less than 30 percent of the request seeks funding of ineligible services, the Administrator normally will consider the request and issue a funding commitment for the eligible services, denying funding only of the ineligible part. If 30 percent or more of the request is for funding of ineligible services, the Administrator will deny the funding request in its entirety. The 30 percent benchmark policy has worked and applicants are familiar with the guidelines. For these reasons the 30 percent benchmark should be kept.

Compliance with the Americans with Disabilities Act (ADA) – Should the Commission adopt an Americans with Disabilities Act certification requirement (Paragraph 29)?

- The ADA is enforced by other agencies. Requiring schools to comply with the Americans with Disabilities Act would be a redundant and unnecessary requirement because schools are required to comply with ADA regardless of E-rate funding.
- Additionally, it is of concern that the NPRM states the Commission should “require applicants to certify that the services for which they seek discounts will be used in compliance with these acts.” This language could be interpreted to mean that all E-rate discounted services must be compliant with ADA. This would cause an unnecessary administrative burden for the applicants and the Administrator.

Choice of Payment Method - Should the Commission specify that service providers must offer applicants the option of discount or completing a Billed Entity Applicant Reimbursement (BEAR) Form (Paragraphs 33-36)?

- Applicants should be able to choose from a menu of discount options. Currently, applicants can (1) pay the service provider the full cost of services, and subsequently receive reimbursement from the provider for the discounted portion, after the provider receives reimbursement through the Billed Entity Applicant Reimbursement (BEAR) process, or (2) pay only the non-discounted portion of the cost of services, with the service provider seeking reimbursement from the Administrator for the discounted portion (3) work with the provider to use this combination of payment that is mutually beneficial to both applicant and provider.
- Additionally, to reduce the administration costs of the program and expedite

payments to applicants, CDE would support a change to allow service providers to assign in advance, BEAR payments directly to the applicant. The current two-step process of payment to the service provider who, in turn, pays the applicant increases administrative costs.

Should the Commission incorporate enforcement measures for remittance of BEAR payments after 20 days (Paragraph 35)?

- The CDE supports the proposal to set the remittance timeline of 20 days and enforcement penalties for late payments. This will shorten, in the long run, the time it takes for applicants to receive discounts.

Equipment Transferability - Comments on adopting a rule limiting transfers for three years from the date of delivery and installation of equipment for internal connections other than cabling, and ten years in the case of cabling (Paragraph 37-40).

- While the aim of reducing the opportunity for schools to transfer or replace equipment yearly may be appropriate, the CDE does not support the option limit transfers for three years from the date of delivery and installation of equipment for internal connections other than cabling, and ten years in the case of cabling. Because the intent of this NPRM improve oversight and program operation, monitoring equipment transfers and cable installations would surely add to administrative costs. Limiting cabling installation to 10 percent per year would certainly effect school district technology implementations, especially when renovating a school.

Use of Excess Services in Remote Areas - Comment on the types of situations that might warrant utilization of excess service obtained through the universal service mechanism for schools and libraries when services are not in use by the schools and libraries for educational purposes (Paragraphs 41-47).

- CDE agrees that the Commission should consider allowing schools to share E-rate eligible services with not-for-profit agencies, at cost, that are not being used during school hours. Sharing of excess service must be limited to organizations that serve the serves teaching and student learning. What do you mean by “fulfill requirements of the school district”? Would a non-profit that rented school space for an after school program that helped students with their homework count? What about programs aimed at helping parents?

Appeals - Comment on increasing the time limit for filing an appeal with the Committee of the Schools and Libraries Division and the time limit for filing an appeal with the Commission from 30 days to 60 days (Paragraphs 48-52).

- The CDE supports the Commission’s proposal to extend the window to submit appeals from 30 to 60 days and accept the postmark date of the appeal as the filing date. The 30-day appeal window available to them frustrates many applicants

because appeals need to be thoughtful and well documented and often a 30-day period is not sufficient to prepare a proper appeal.

Funding of Successful Appeals - Comment on proposals regarding the funding of successful appellants (Paragraphs 53-57).

- CDE believes that the integrity of the \$2.25 billion annual allotment for schools and libraries should be maintained. To achieve this, CDE suggests:
 - Funds should be set aside for pending appeals during the funding year. Should successful appeal demand exceed the supply of set-aside funds, carryover funds from previous years should fund appeals.
 - If carryover funds are exhausted or non-existent, any funds made available through the Form 500 process should be made available for successful appeals.
 - Do not use subsequent years' funding for successful appeals. Then isn't it true that you might win an appeal and yet still get nothing? Is this really what we want if it isn't the applicant's fault that their application was denied in the first place?

Independent Audits - Comment on whether the Commission should to improve oversight capacity to guard against waste, fraud, and abuse, our rules should explicitly authorize the Administrator to require independent audits of recipients and service providers, at recipients' and service providers' expense, where the Administrator has reason to believe that potentially serious problems exist, or is directed by the Commission (Paragraphs 58-59).

- To guard against waste, fraud and abuse, the Commission or the Administrator should bear the costs of audits. The E-rate process has a sufficient number of reasons to dissuade applicants without adding another by imposing the requirement for applicants to pay for audit expenses.
- To ease the confusion about audits conducted by the Commission and Administrator, it would improve program operation for the Administrator and applicants if the Administrator published an audit standard or audit guide. The standards or guidelines should contain the description of audit and compliance requirements to be audited and documentation required for the audit. This would also be useful for training applicants about the audit process.

Prohibitions on Participation - Comment on whether the Administrator can and should adopt rules barring applicants, service providers, and others that engage in willful or repeated failure to comply with program rules from involvement with the program, for a period of years (Paragraphs 60-63).

- Current program rules do not allow the Commission to bar entities from participating in the program for periods of time rather than initiating forfeiture proceedings against those that willfully or repeatedly fail to comply with statutory and regulatory requirements. Applicants deserve protection from vendors that are willing to take advantage of the program or applicants in need of assistance with the program

process.

- Certainly there are disadvantages to the Administrator for prohibit vendors from participating in the program. Possibly an applicant self-policing resource could be considered. Developing a resource where applicants can find out about the experience of other applicants with certain vendors could allow applicants and service providers who are playing by the rules to make their own decisions about potential collaborators and consultants.

Unused Funds - Comment on whether there are any administrative modifications to the schools and libraries universal service support mechanism that we should implement to improve program operation, ensure a fair and equitable distribution of funds, or guard against waste, fraud, and abuse, that could be implemented immediately without need for a rule change (Paragraphs 64-65).

- Allow for a simple application process if the application is essentially the same as the prior year's application and there are not program changes that would change the eligibility of the applicant or services requested. This could improve program operations by reducing the burden on applicants and the Administrator.
 - The CDE suggests eliminating 28-day posting period and use current state and local procurement rules to govern competitive bidding processes. With this change the Form 470 becomes a public notice of intent, which most school districts must employ already and could be updated yearly. This would streamline the application and review process while maintaining fair and equitable access for all service providers.

Treatment of Unused Funds – Comment on disbursing unused funds in subsequent funding years of the schools and libraries mechanism would provide additional resources for applicants, thereby assisting efforts to provide affordable telecommunications and information services to schools and libraries (Paragraphs 66 and 67).

- The entire \$2.25 billion annual allotment for the program should be delivered to applicants.
 - Unused funds from one year should be carried forward to the current program year to fund pending appeals and pending applications. Funds unused from prior years rolled over to the current should not count as part of the \$2.25 billion.

Conclusion

- The E-rate program has provided schools and libraries with billions of dollars in discount funding during the past four years and helped the poorest schools connect classrooms to the Internet. As the program evolves, a difficult balance between making the process simple for applicants and preventing waste and abuse must be

achieved. The pendulum seems to be on the side of preventing waste and abuse, which causes tremendous amounts of work for applicants in the process. The pendulum needs to swing back towards simplifying the process for the benefit of applicants.

Any changes made to the program must be set prior to the opening of the program year. CDE suggests that July 1st be the latest date that policies or regulations are adopted for any given year because many applicants will already be in the planning, shopping/procurement and budgeting phases of their technology implementation.

The CDE appreciates the support the Commission and Administrator has provided to the Universal Service Program for Schools and Libraries. The E-rate program is an integral part of education technology and helps many of our schools provide a school environment that allows students to grow with technology.